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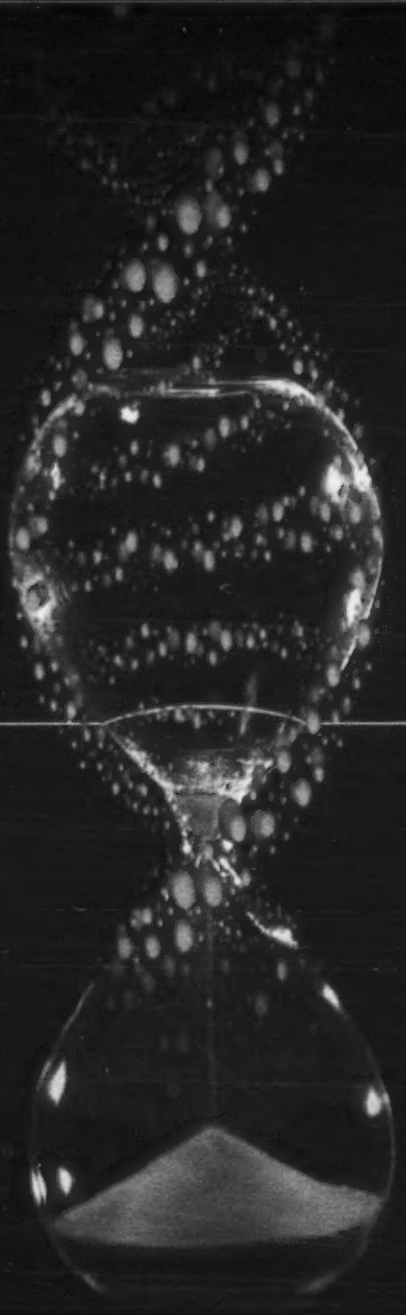
ROYAL CANADIAN MOUNTED POLICE • GENDARMERIE ROYALE DU CANADA



RETROACTIVE AUTHORIZATIONS: SOLVING COLD CASES

THE NATIONAL DNA DATA BANK OF CANADA

ANNUAL REPORT 2011-2012

Royal Canadian Mounted Police / Gendarmerie royale du Canada

Canada

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NATIONAL DNA DATA BANK OF CANADA

Forensic Science and Identification Services,
Royal Canadian Mounted Police

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MESSAGE FROM THE COMMISSIONER

ROYAL CANADIAN MOUNTED POLICE

Every year, the National DNA Data Bank of Canada (NDDB) reinforces its value as an investigative tool for law enforcement. While its function is simple – to identify criminals and exonerate the innocent – the NDDB operates within a diverse environment that must consider scientific advancements, privacy rights and changing legislation.

The 2012 Annual Report takes a look at the impact of evolving legislation and how it has allowed the NDDB to help solve cold-cases – many committed before the creation of the NDDB in 2000. Specifically, the Annual Report looks at retroactive authorizations – whereby provincial court judges could authorize a DNA sample from individuals already convicted of serious crimes. As a result, many criminals who would not otherwise have been required to do so were ordered to provide DNA samples. Retroactive orders have assisted 119 investigations, several of which are featured in this Annual Report.

Over the years, retroactive orders resulted in an additional 4,809 DNA profiles being included in the NDDB. These are captured in the overall number of NDDB profiles which, by March 31, 2012, was at 316,020: 242,184 profiles in the Convicted Offenders Index and 73,836 in the Crime Scene Index.

The dedicated women and men working in law enforcement, forensic sciences and the criminal justice system are integral to the NDDB's success. I would also like to acknowledge the members of the NDDB Advisory Committee, whose strategic guidance is essential to the NDDB. Their expertise, guidance and professionalism ensures that the NDDB remains a valuable investigative tool.

This year, the NDDB Advisory Committee lost a valuable member, Dr. George Carmody, who passed away suddenly on June 13, 2011.

He was Vice Chairperson of the NDDB Advisory Committee, as well as an Adjunct Research Professor of Biology at Carleton University. Dr. Carmody was world renowned for his expertise in the fields of population genetics and statistics and their application to forensic DNA analysis. He will be greatly missed by his friends and colleagues.

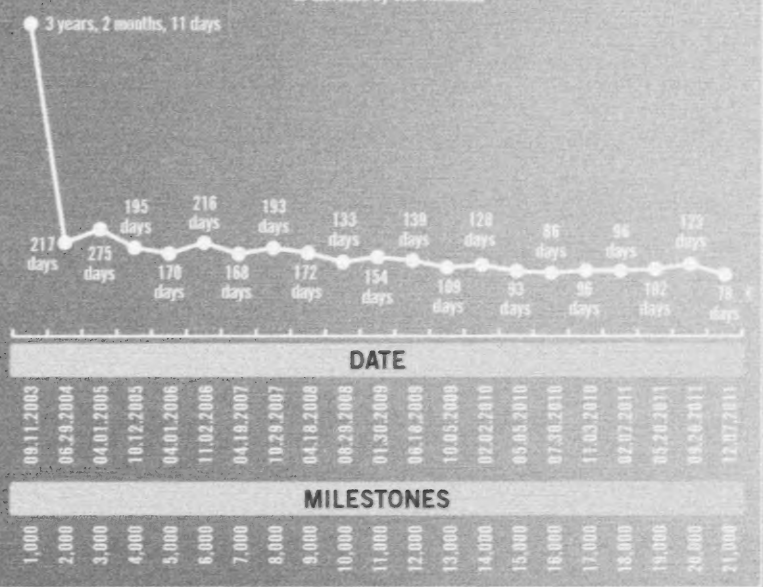
Bob Paulson
Commissioner

QUICK FACTS

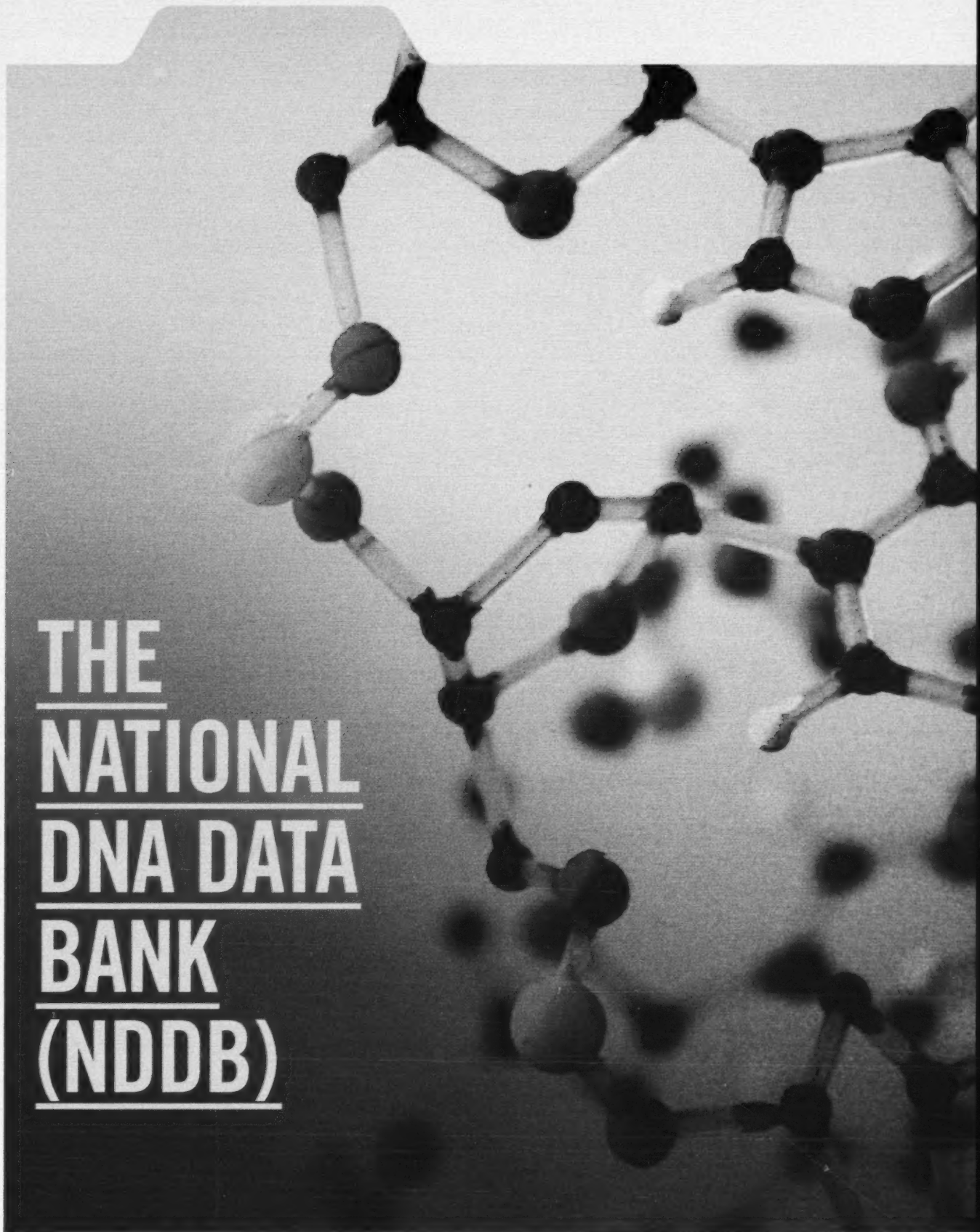
DNA Profiles Contained in the NDDB	316,020
DNA Profiles Contained in the Convicted Offenders Index	242,184
DNA Profiles Contained in the Crime Scene Index	73,836
Convicted Offender Samples Received in 2011/12	28,955
Increase in Crime Scene Index Profiles in 2011/12	9,332
Offender Hits (Convicted Offender to Crime Scene) in 2011/12	3,437
Offender Hits since June 30, 2000	21,976
Forensic Hits (Crime Scene to Crime Scene) in 2011/12	353
Forensic Hits since June 30, 2000	2,820
Investigations Assisted by the NDDB in 2011/12	3,790
Investigations Assisted by the NDDB since June 30, 2000	24,796

MILESTONES

Milestones—Time Required for the Number of Offender Hits to Increase by One Thousand



As more DNA profiles are entered into the NDDB, the number of days required for the NDDB offender hits to increase by 1000 decreases. It took more than three years for the NDDB to reach its first milestone of 1000 hits. In 2011/12 that same 1000 increment milestone was achieved in less than three months.



THE NATIONAL DNA DATA BANK (NDDB)

The RCMP is the steward of the NDDB on behalf of the Government of Canada. It operates the NDDB for the benefit of the entire law enforcement community within Canada.

Confirming the Government of Canada's commitment to combat crime, especially violent crime, Bill C-3, the *DNA Identification Act* (S.C. 1998 c. 37) received Royal Assent on December 10, 1998. The RCMP built the NDDB after Bill C-3 received Royal Assent.

In 2000, Parliament enacted Bill S-10, *An Act to Amend the National Defence Act, the DNA Identification Act and the Criminal Code* (S.C. 2000, c. 10). The NDDB became operational on June 30, 2000 when Bills C-3 and S-10 were proclaimed.

The NDDB improves the administration of justice by:

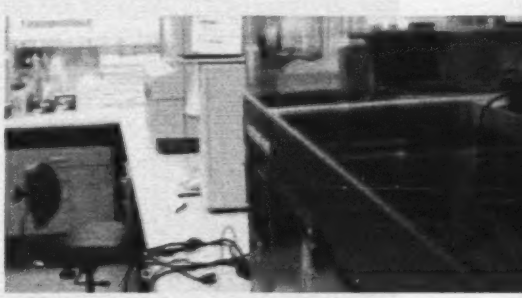
- Contributing to the early identification of those who commit serious crimes;
- Linking crimes where there are no suspects;
- Helping to identify suspects;
- Eliminating suspects where there is no match between crime scene DNA and profiles in the NDDB; and
- Determining whether a serial offender is involved.

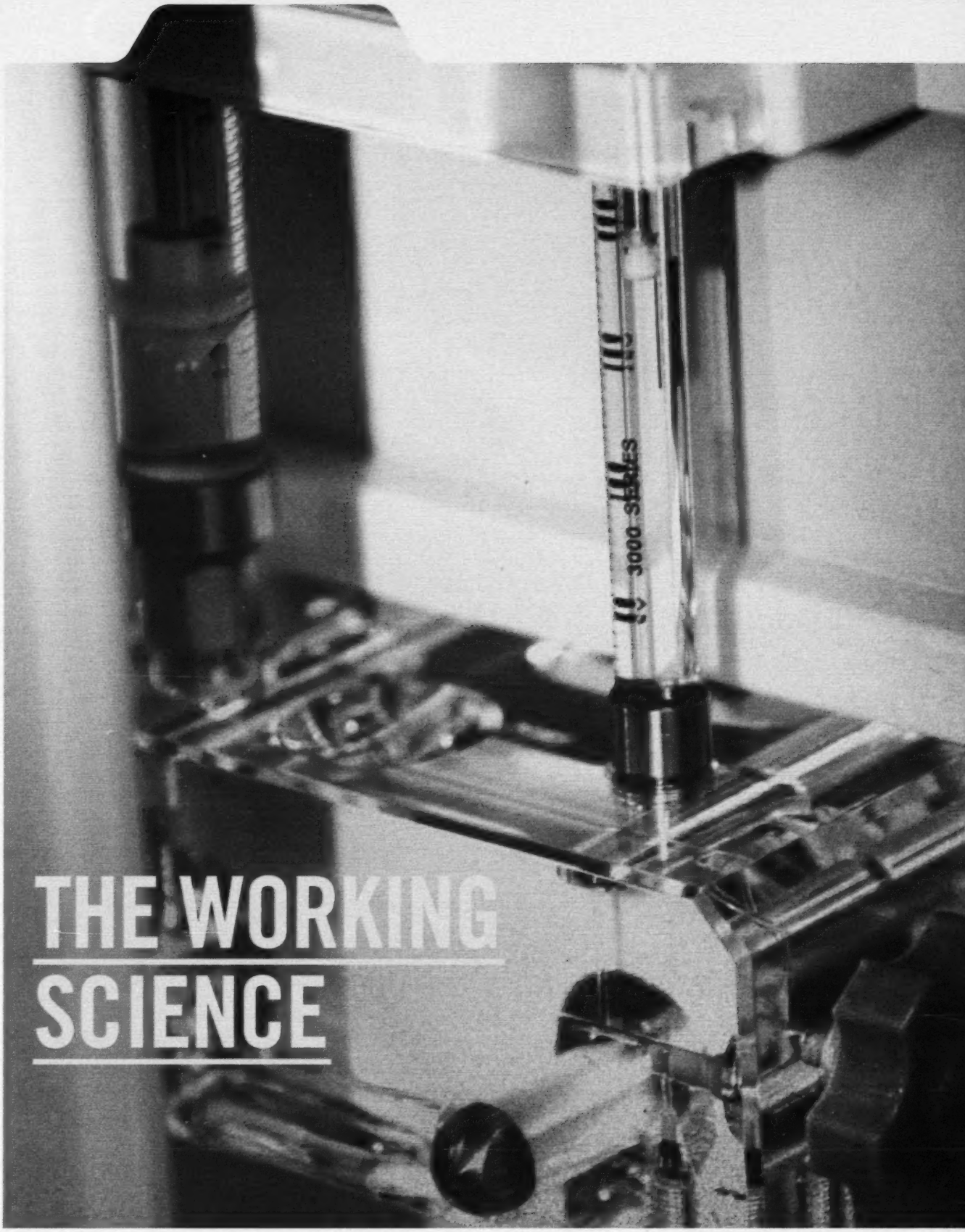
The NDDB conducts the following comparisons to assist in criminal investigations:

- DNA profiles developed from crime scene samples are compared against DNA profiles from other crime scenes. These matches identify potential links between different crimes, which helps investigators look for other commonalities that may assist with solving the crimes.
- DNA profiles developed from crime scene samples are compared against convicted offender DNA profiles to associate an offender with a particular crime.

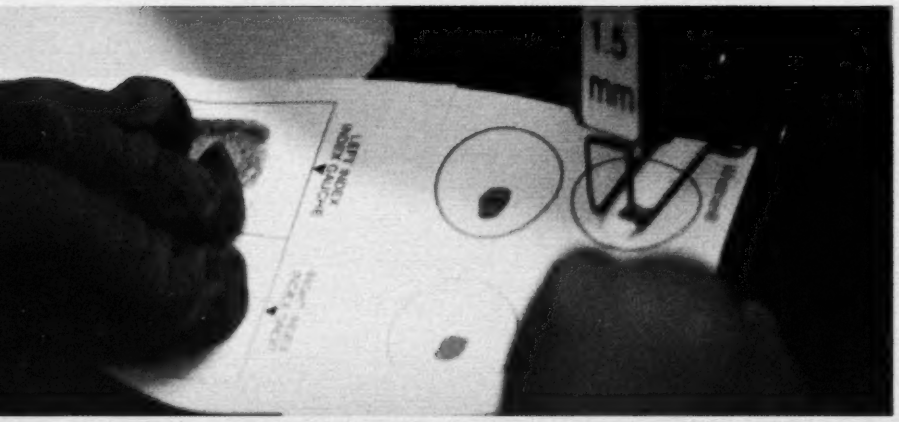
In 2011/12, the NDDB identified 353 crime scene to crime scene matches, and 3,437 crime scene to convicted offender matches, bringing the total hits for this fiscal year to 3,790.

See Appendix B for a detailed chronology of DNA legislation in Canada.





THE WORKING SCIENCE



The NDDB comprises two indices: the Convicted Offenders Index and the Crime Scene Index.

THE CONVICTED OFFENDERS INDEX (COI)

Biological samples collected from convicted offenders are processed by the NDDB and the resulting DNA profiles are entered into the COI.

The COI is the electronic DNA profile database developed from biological samples collected from:

- Offenders convicted of designated primary and secondary offences (see Appendix A) identified in section 487.04 of the *Criminal Code*; and
- Offenders who meet the retroactivity criteria in section 487.055 of the *Criminal Code*. In general terms, this applies to those convicted of certain serious offences who were already serving a sentence or who had been declared a dangerous offender or a dangerous sexual offender before June 30, 2000 when the *DNA Identification Act* was proclaimed. (See Key Statistics explanatory notes on page 19 for a complete description of retroactive provisions).

Biological samples from convicted offenders are collected by:

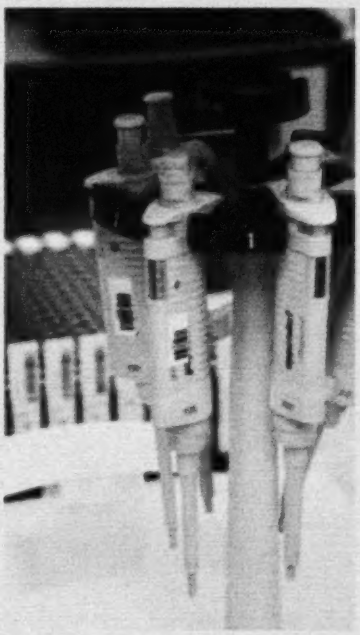
- A peace officer who is able, by virtue of training or experience, to take samples of bodily substances from the person, by means of the procedures described in subsection 487.06 of the *Criminal Code*; or
- Another person who is able, by virtue of training or experience, to take under the direction of a peace officer, samples of bodily substances from the person, by means of those procedures.

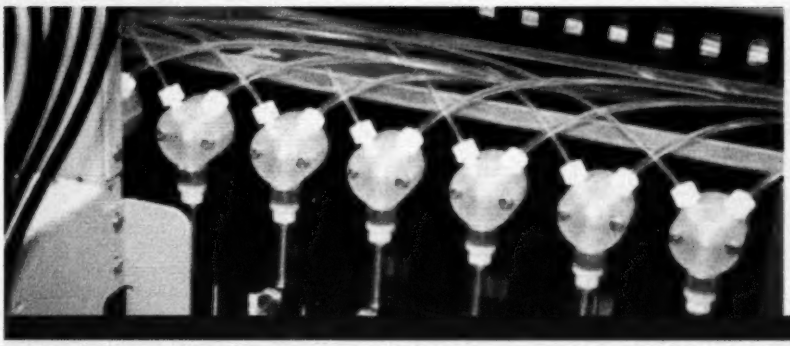
These biological samples are obtained using NDDB-specific sample kits designed for the collection of the following bodily substances:

- **Blood:** The sample is obtained by using a sterile lancet to prick the fingertip.
- **Buccal**: The inside of the mouth is rubbed with a foam applicator to obtain skin cells.
- **Hair:** Six to eight hairs are pulled out with the root sheath attached.

Convicted offender biological samples are collected and submitted to the NDDB to be processed into DNA profiles. Robotics technology, coupled with a sophisticated Sample Tracking and Control System (STaCS™), allows NDDB analysts to rapidly process samples in a cost-effective way, while ensuring overall data security and providing quality control throughout the DNA analytical process. The DNA profiles generated are the result of 13 specific DNA markers that are tested to produce a DNA profile which is unique to each individual (with the exception of identical twins).

DNA profiles are loaded into the Combined DNA Index System (CODIS), a software package that stores and compares the profiles. CODIS was developed by the Federal Bureau of Investigation and the U.S. Department of Justice and is provided to the NDDB at no cost. The CODIS software is a universally accepted tool for forensic laboratories, which allows the NDDB to compare DNA profile information using a standard, secure format. The NDDB shares DNA information through an international





agreement with INTERPOL, approved by the Government of Canada, which limits its use to the investigation and prosecution of criminal offences.

As of March 31, 2012, the COI contained 242,184 DNA profiles.

THE CRIME SCENE INDEX (CSI)

The CSI is a separate electronic database composed of DNA profiles obtained from crime scene investigations of the same designated offences as the COI. Exhibits containing biological evidence are collected by investigators and submitted to one of the three forensic laboratory systems:

- The RCMP Forensic Science and Identification Services (with sites in Halifax, Ottawa, Winnipeg, Regina, Edmonton and Vancouver);
- The Centre of Forensic Sciences in Toronto and Sault Ste. Marie; and
- The Laboratoire de sciences judiciaires et de médecine légale in Montréal.

Crime scene samples are analyzed and the resulting DNA profiles are uploaded using CODIS into the CSI by the forensic laboratories. The NDDB retains this electronic information as well as basic details such as the date, location of the submitting laboratory and a unique number identifier that allows information to be compared by the submitting laboratory in the event of a future match.

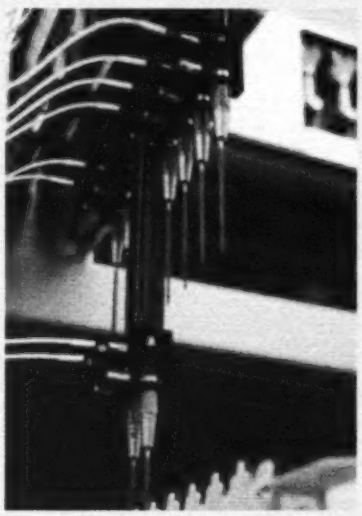
As of March 31, 2012, the Crime Scene Index contained 73,836 DNA profiles.

PRIVACY OF INFORMATION

The NDDB adheres strictly to the *DNA Identification Act*, which balances privacy rights with the need for police officer to identify suspects. Stringent procedures governing the handling of biological samples and resulting DNA profiles ensure that the privacy rights of individuals are protected.

It is important to note that convicted offender samples are identified simply by a bar code number and that crime scene samples are identified by a unique number identifier. In fact, the donor identity of a convicted offender is separated from the genetic information when the sample arrives at the NDDB. The bar code is the only link between personal information, the biological sample and the DNA profile. The personal information is protected information that is not accessible by NDDB staff, and is kept in a separate registry by the RCMP's Canadian Criminal Real Time Identification Services.

The *DNA Identification Act* makes it clear that the NDDB profiles can only be used for law enforcement purposes. The NDDB does not share the DNA profiles with anyone other than law enforcement agencies. The 13 specific markers comprising the DNA profile are considered anonymous and, other than gender, do not provide specific medical or physical information about the donor. The genetic regions chosen by the NDDB are the same regions of genetic variation used throughout the United States and in many other countries conducting forensic DNA analysis.



PROCESS FOR REPORTING A MATCH

NDDB processes biological samples from convicted offenders and uploads the resulting DNA profiles into the Convicted Offenders Index.

Forensic laboratories process biological samples left at crime scenes and upload the resulting DNA profiles into the Crime Scene Index of the NDDB.

NDDB runs a search between the Crime Scene Index and the Convicted Offenders Index.

Match between a convicted offender's DNA profile and a crime scene DNA profile.

Bar code, laboratory identifier and CODIS identifier are brought to Canadian Police Services Information Centre (CPSIC).

CPSIC forwards the convicted offender data to the forensic laboratory.

Forensic laboratory passes the convicted offender identity information to the investigator.

PROCESS FOR CONFIRMING A MATCH

The investigator assesses the case evidence to determine if further investigation of the suspect is required.

If evidence of a match between the convicted offender and the crime scene profile is required for court purposes, the investigator must apply to a provincial court judge for a DNA warrant. If the warrant is ordered, a biological sample can be collected from the suspect under that authority.

The biological sample is submitted to a forensic laboratory for analysis.
The laboratory compares the suspect's DNA profile to that of the crime scene evidence.

The forensic laboratory issues a report confirming a match between the suspect's DNA profile and that of the crime scene evidence.

Based on the laboratory report and other investigative information, the investigator can consider if charges should be laid or recommended against the suspect.

RETROACTIVE QUALIFICATION

SOLVING A COLD CASE

In 1992 the body of a young girl was found in an industrial yard less than 10 kilometers from her home in Edmonton, Alberta. Corrine Gustavson had been sexually assaulted and murdered. Despite considerable evidence at the scene, police had few leads and the case eventually went cold.

For twelve years, Corrine's assailant eluded justice. Then, just 18 months after the National DNA Data Bank of Canada started operations, Clifford Sleigh's criminal past finally caught up with him.

POPULATING THE CRIME SCENE INDEX (CSI) – CURRENT AND UNSOLVED CASES

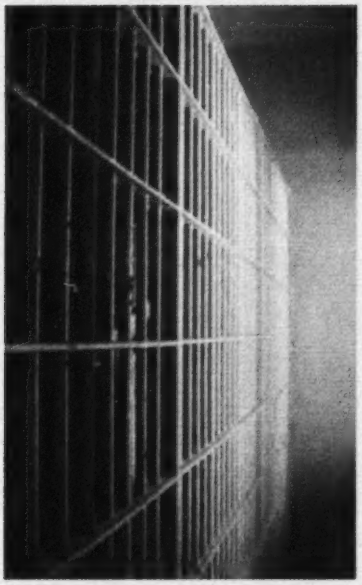
As soon as the NDDB began operations on June 30, 2000, Canadian forensic laboratories began entering DNA profiles into the CSI as part of current ongoing investigations under the provisions of the *DNA Identification Act*. Working in close consultation, investigators and forensic scientists reviewed unsolved criminal investigations that were in progress before the start of the NDDB. Where DNA profiles could be developed from crime scene samples, these were uploaded to the CSI.

Forensic scientists had successfully extracted a biological sample from the clothing Corrine had been wearing the day she was killed. The DNA profile was among those added to the CSI in its first year of its operation.

POPULATING THE CONVICTED OFFENDERS INDEX (COI) – CURRENT AND RETROACTIVE SAMPLES

The *DNA Identification Act* and the *Criminal Code* allowed for the collection of biological samples from individuals found guilty of designated *Criminal Code* offences on or after June 30, 2000 and for uploading the resulting profiles to the Convicted Offenders Index. The legislation also included provisions for the collection of samples from individuals convicted of designated offences before June 30, 2000. It essentially allowed judges to retroactively issue a DNA authorization requiring an individual to provide a biological sample. The collection of these samples, known as retroactive samples, was reserved for the most serious crimes and was restricted to individuals who, prior to June 30, 2000, had been:

- Declared a dangerous offender;
- Convicted of two or more murders committed at different times;



- Convicted of at least two sexual offences, sentenced to at least two years for one of these, and on the date of application is serving a sentence for a sexual offence.

Although Sleigh had not yet been identified as Corrine Gustavson's killer, he was known to police. In fact, while the crime scene DNA profile was being developed and uploaded to the CSI, Sleigh was serving time for a 1996 conviction for a sexual assault with a weapon. He had been declared a dangerous offender, which meant his DNA profile could be added to the COI upon receipt of an application by the prosecutor and authorization by a judge. Sleigh was among the offenders identified on the retroactive list of convicted offenders.

Soon after Sleigh's DNA profile was added to the COI in 2001, it hit to the CSI profile submitted a few months earlier. If not for the retroactive sample collection provisions enacted in the DNA legislation which required Sleigh to submit a sample for his 1996 sexual assault conviction, he may never have been linked to the 1992 sexual assault murder of Corrine Gustavson. For his crime, he was was sentenced to 25 years without parole.

LEGISLATION CHANGES AND THE EVOLUTION OF RETROACTIVE SAMPLE COLLECTION

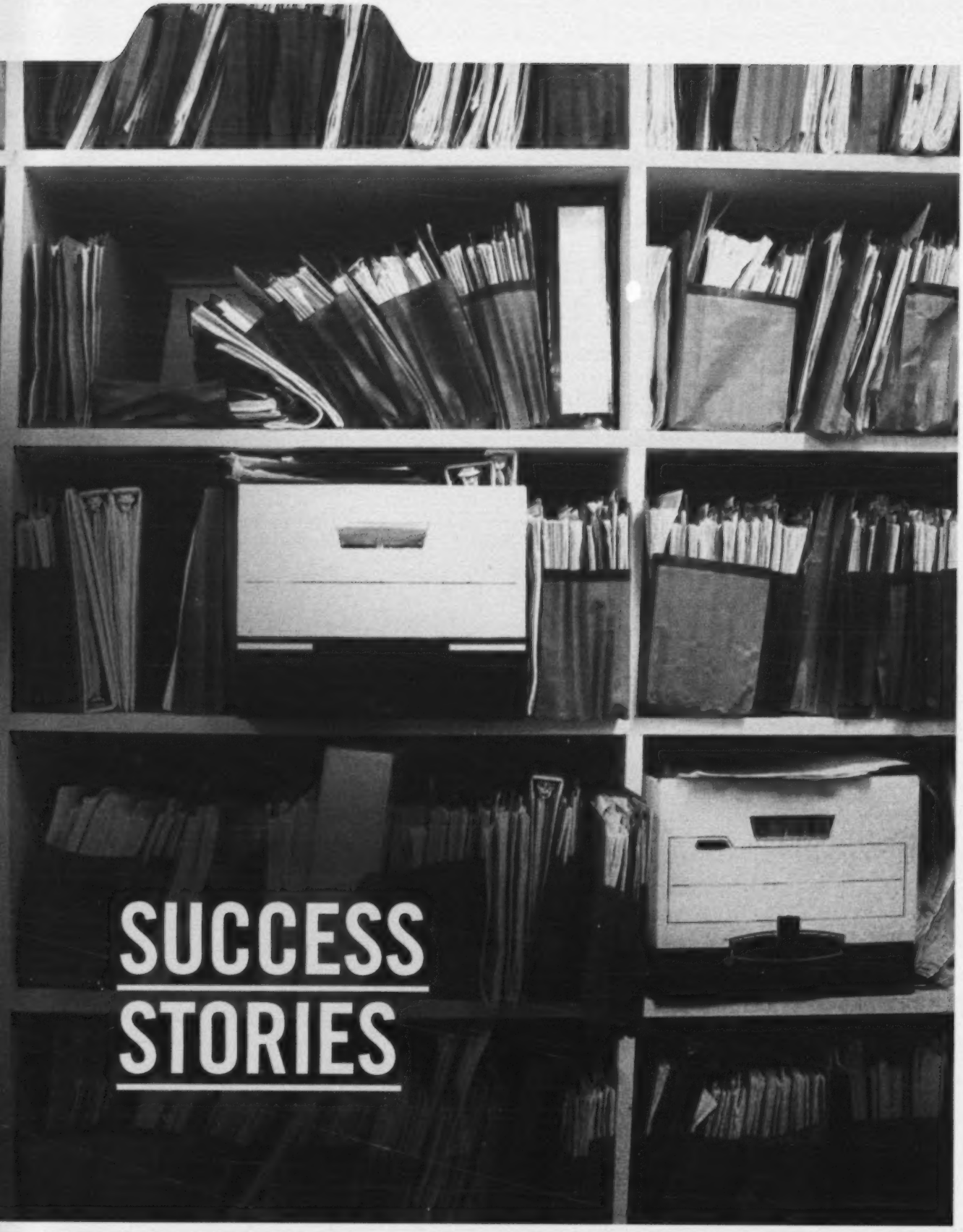
When the *DNA Identification Act* was written and the *Criminal Code* amended, legislators recognized that the collection of samples should not be strictly limited to convictions after June 30, 2000. The legislation was written to ensure that individuals convicted of heinous crimes or who were a threat to public safety would not be exempt from having to submit a DNA sample for inclusion in the COI. More than 2,200 persons were identified on the original retroactive list of offenders.

There have been two significant amendments to the *DNA Identification Act* and *Criminal Code* since 2000 with respect to retroactive qualification. In 2005, the retroactive sample collection provisions were expanded to include dangerous sexual offenders and persons convicted of manslaughter. In addition, the requirement to obtain

authorization for retroactive sample collection from an offender convicted of murder or sexual assault was reduced from two convictions to only one. The amendments resulted in the identification of more than 3,800 offenders for possible inclusion in the CODIS.

In 2008, the retroactive sample collection provisions were expanded again, this time to include attempted murder and conspiracy to commit murder, if the individual was still serving a sentence for the offence. As for sexual offences and manslaughter, the minimum two year sentence requirement was removed and replaced with the requirement that the person was still serving a sentence for that offence. As a result of this, another 128 offenders were identified for possible inclusion in the CODIS.

In total, retroactive authorizations have benefited 119 criminal investigations – including the Corrine Gustavson case.



SUCCESS STORIES

MURDER AND SEXUAL ASSAULT

In August 1991, 63-year-old Muriel Holland was found sexually assaulted and murdered in her apartment.

During their nine year investigation, police interviewed approximately 1,000 people and collected biological samples from 370 subjects. Despite 120 comparisons between the crime scene samples and DNA samples from persons of interest, no match was made and the case remained unsolved.

In November 2000, the unidentified crime scene DNA profile was entered in the CSI of the newly created NDDB. Less than six months later, on May 4, 2001, the profile of Richard Eastman, previously convicted of an unrelated sexual assault and declared a dangerous offender, was added to the COI. That same day Eastman's COI profile hit to the CSI profile from the Muriel Holland murder. Eastman was charged and subsequently convicted of First Degree Murder in 2004.

MURDER

When Eric Fish was convicted of murder in 1985, there was no NDDB.

Even when the NDDB began operations in June 2000, an authorization to obtain Eric Fish's DNA for entry into the COI could not be made because he had just one murder conviction. In 2005 the legislation changed and pre-NDDB single murder convictions were re-examined, samples collected and profiles uploaded to the NDDB.

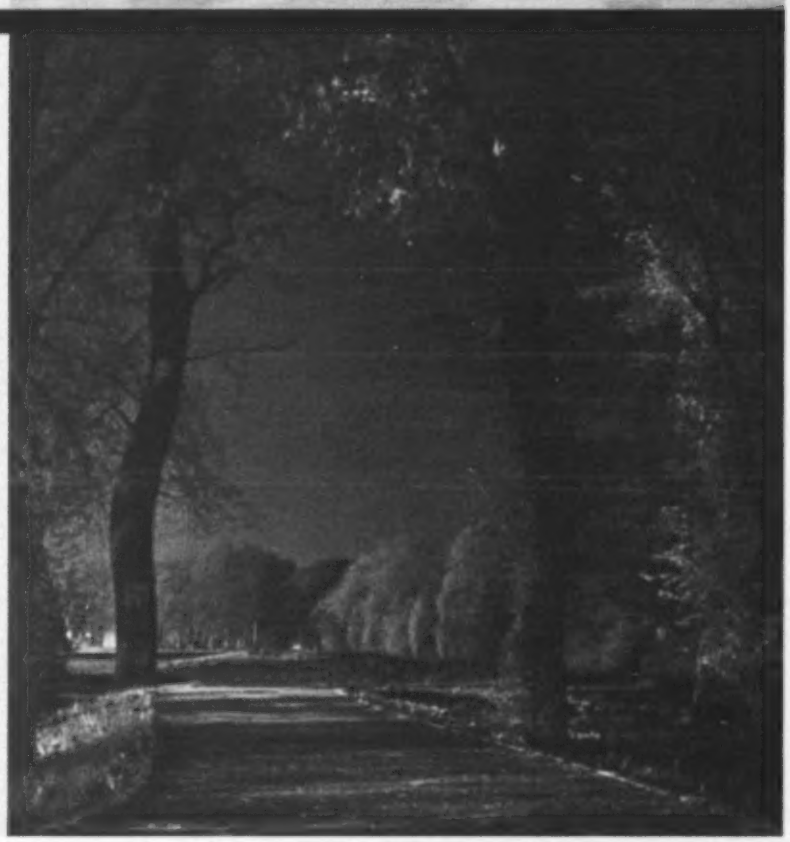
Eric Fish's DNA profile was uploaded to the COI in 2006. Within the same month, it hit to a crime scene profile from the 2004 murder of Bill Abramenko. The retroactive authorization based on his 22 year old murder conviction led to the crime being solved.

SEXUAL ASSAULT

In January 2003, Anthony Clark's DNA profile was uploaded to the NDDB because of two separate sexual assaults he had committed in 1996 and 1999.

At the time his DNA profile was added to the COI he was serving a sentence for the 1999 sexual assault conviction.

In July 2010 Clark offended again, grabbing a woman while she walked in the park at night. A short time later he turned himself in to police claiming that his DNA was already on file. Because his profile had already been uploaded to the COI, his identity was confirmed as the attacker in the park that night.



SEXUAL ASSAULT

In 2002, while still serving a sentence for three 1997 sexual assault convictions, Peter Donald Harlow's DNA profile was entered into the NDDB's COI.

Although he was in prison serving his sentence for the 1997 convictions, police would soon learn that Harlow had a history of criminal behavior that went back much further.

Within one year of his DNA profile being uploaded to the COI, two unsolved sexual assault cases going back to 1987 were solved. The crime scene profiles from these investigations had been entered into the CSI and matched Harlow's DNA profile. Harlow was convicted for the 1987 sexual assaults in 2004.

SEXUAL ASSAULT

In 1991 a 27-year-old woman was violently attacked and sexually assaulted near her Etobicoke home by a man wearing a balaclava.

The case remained unsolved until 2002 when the crime scene DNA profile was added to the CSI. That same month the CSI profile hit to Errol Edwards, a man who was nine years into a 13 year sentence for three sexual assaults he had committed in 1992.

Edwards was charged with the 1991 attack and was subsequently convicted of aggravated sexual assault. He received a sentence of 15 years followed by long-term supervision for a period of 10 years.

NATIONAL DNA DATA BANK (NDDB)
ADVISORY COMMITTEE

The role of the National DNA Data Bank Advisory Committee is to provide the NDDB with strategic guidance and direction concerning scientific advancements, matters of law, legislative change and ethical practices. The NDDB Advisory Committee reports to the Commissioner of the RCMP several times per year on key issues that need to be considered for the NDDB to continue its successful operations.

The NDDB Advisory Committee is as committed today as it has been since its inception in 2000 to the NDDB's continued success as an instrument of public safety. The NDDB is an extremely effective tool in supporting front line investigators and the law enforcement community in general in preventing and solving crime. The ability of the NDDB Advisory Committee to keep pace with new technology and identify opportunities to help enhance the effectiveness of the NDDB is essential. Equally important is the notion that advancements should not come at the expense of individual liberties and privacy.

Individual privacy as it pertains to forensic DNA continues to be a key priority for the NDDB and its Advisory Committee. Going forward, as issues emerge and legislation is developed, the NDDB Advisory Committee will continue to monitor privacy concerns in consultation with the Privacy Commissioner.

I would like to thank the members of the NDDB Advisory Committee whose depth of knowledge will ensure that we can continue to move the NDDB forward in a positive direction.

I would also like to reflect on the sudden passing of Vice Chairperson, Dr. George Carmody. His knowledge was an asset to the NDDB Advisory Committee and he will be sadly missed.

Garry Loeppky, O.O.M.
Deputy Commissioner (retired), Chairperson

National DNA Data Bank Advisory Committee

NATIONAL DNA DATA BANK

ADVISORY COMMITTEE MEMBERS

GARRY LOEPPKY

D/Commr. (Rtd), Chairperson, former Deputy Commissioner of Operations, Chief Human Resources Officer, and Commanding Officer of the RCMP in New Brunswick.

CHANTAL BERNIER

Assistant Commissioner, Office of the Privacy Commissioner of Canada. Ms. Bernier was appointed by Order-in-Council as Assistant Privacy Commissioner (Privacy Act) on December 8, 2008 and was appointed in February 2009 as a member of the National DNA Data Bank Advisory Committee.

DR. FREDERICK R. BIEBER

Canadian-born Associate Professor of Pathology in the Faculty of Medicine at Harvard University, Boston, Massachusetts. Dr. Bieber is a medical geneticist and a specialist in bio-medical ethics.

THE HONOURABLE PETER CORY

C.C., C.D., Q.C., retired Justice of the Supreme Court of Canada. The Honourable Peter Cory is currently Special Advisor to the Federal Department of Justice and also Chancellor Emeritus of York University.

GISÈLE CÔTÉ-HARPER

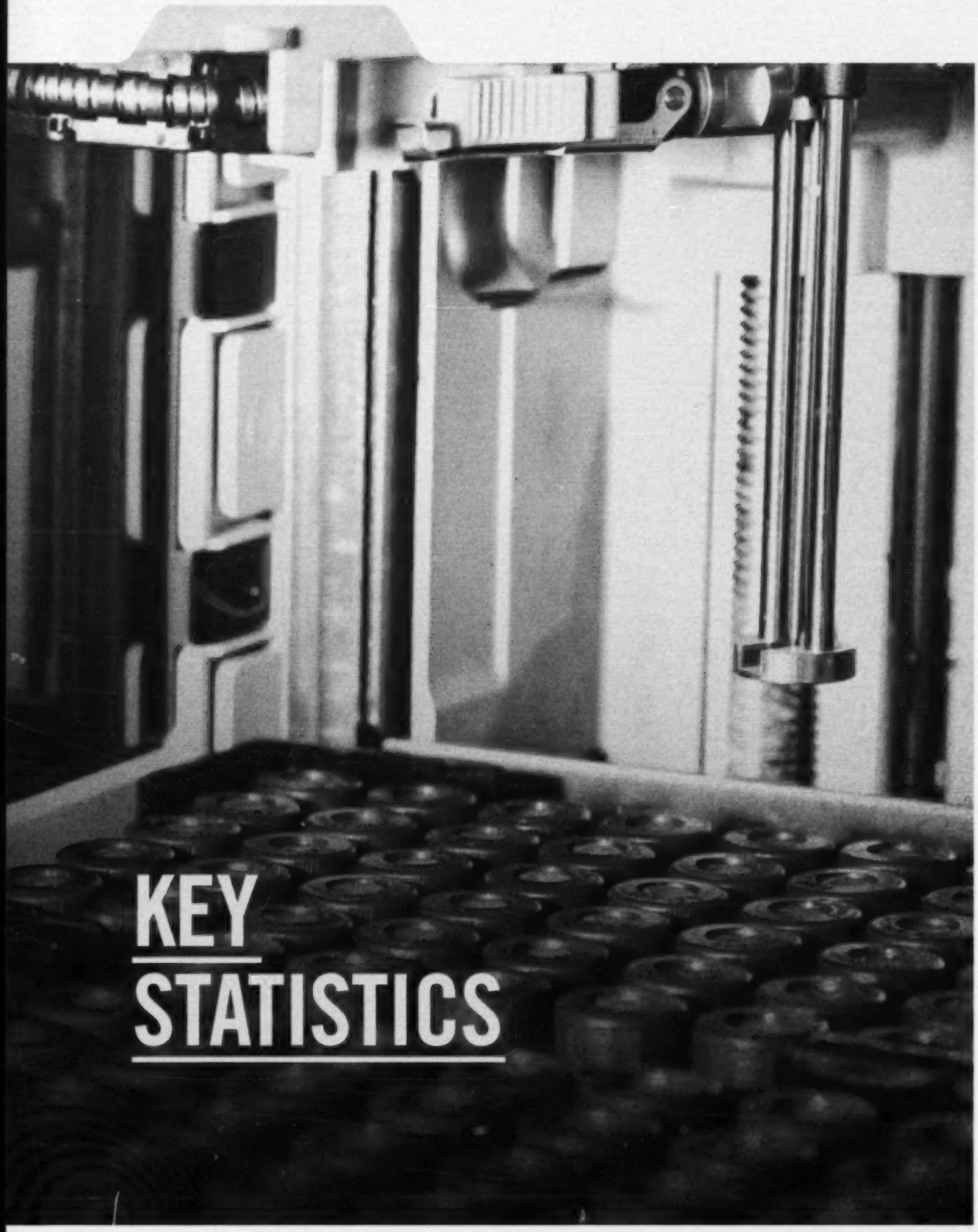
O.C., Q.C., graduate of Harvard Law School and currently a Barrister and Emeritus Professor at the Faculty of Law, Université Laval. M^{me} Côté-Harper is recognized nationally and internationally as a legal expert on Human Rights issues.

DR. WILLIAM S. DAVIDSON

Medical Genetics Specialist and Professor of Molecular Biology and Biochemistry, Simon Fraser University (Burnaby, B.C.). Dr. Davidson has published widely in the areas of molecular evolution, population genetics, genomics and human genetics.

DR. RON FOURNEY

O.O.M., Director, Science and Strategic Partnerships, Forensic Science and Identification Services, RCMP. Dr. Fourney is a research scientist and founding member of the RCMP DNA program. He has been instrumental in the development and implementation of forensic DNA typing for Canada.



KEY STATISTICS

Unless otherwise noted, key statistics are reported from June 30, 2000–March 31, 2012

TABLE 1 – Cases Assisted by the NDDB	
Breaking and Enter	9,161
Sexual Offence	2,771
Robbery	2,513
Assault	1,641
Homicide	1,557
Attempted Murder	502
Other	3,831
TOTAL	**21,976**

TABLE 2 – Match Inventory Report	
Offender Hit (Crime Scene Index to Convicted Offenders Index)	21,976
Forensic Hit (Crime Scene Index to Crime Scene Index)	2,820
Offender Duplicate (Two samples taken from the same person)	11,075
Identical DNA Profiles (from different individuals i.e. identical twins)	179

EXPLANATORY NOTES

Offender "Hit": A DNA profile developed from crime scene evidence and entered in the Crime Scene Index of the NDDB matches a DNA profile in the Convicted Offenders Index.

Forensic "Hit": A DNA profile developed from crime scene evidence and entered in the Crime Scene Index of the NDDB matches another crime scene DNA profile in the Crime Scene Index.

Offender Duplicate: Cases where two biological samples from the same person were submitted to the NDDB.

Identical DNA Profiles: Profiles of identical twins.

International Participation: As of March 31, 2012, the NDDB has received 894 incoming international requests to search its indices— the Convicted Offenders Index and the Crime Scene Index—resulting in two Offender Hits and two Forensic Hits. The NDDB has sent out 148 outgoing search requests, resulting in one Offender Hit and one Forensic Hit.

Convicted Offender's Profile: A DNA profile from an offender convicted of a designated offence (see Appendix A).

Crime Scene Profile: A DNA profile developed from biological evidence found at a crime scene.

Samples Received versus Profiles Contained in the Convicted Offenders Index

As of March 31, 2012, the NDDB had received 264,043 biological samples, of which 242,184 DNA profiles were contained in the Convicted Offenders Index. The difference of 9.1% can be attributed to rejected samples, duplicate samples, biological samples in the process of being treated and profiles removed from the Convicted Offenders Index because the retention period had expired, or the conviction or the order/authorization was quashed on appeal.

TABLE 3 – DNA Profiles Contained in the NDDB	
Convicted Offenders Index	242,184
Crime Scene Index	73,836
TOTAL	**316,020**

Note: The NDDB receives 600-700 convicted offender samples per week.

TABLE 4 – Breakdown of Profiles Contained in the Crime Scene Index	
Centre of Forensic Sciences (Toronto and Sault Ste. Marie)	27,201
Laboratoire de sciences judiciaires et de médecine légale (Montréal)	23,297
RCMP Forensic Science and Identification Services (Halifax, Ottawa, Winnipeg, Regina, Edmonton, Vancouver)	23,338
TOTAL	**73,836**

TABLE 5 – Breakdown of Convicted Offender Samples Received According to Category and Offence Type	
DNA Data Bank Orders	259,234
Retroactive Authorizations	4,809
TOTAL	**264,043**
Primary	140,221
Secondary	121,582
Other	2,240
TOTAL	**264,043**

Note: The "Other" category includes samples submitted following conviction for a non-designated offence or without a court order.

EXPLANATORY NOTES

The Convicted Offenders Index is a post-conviction database composed of two categories of samples:

DNA Data Bank Orders
Includes DNA samples collected from offenders who are convicted of an offence committed at any time, including before June 30, 2000, if the offence is a designated offence when the person is sentenced or discharged.

Retroactive Authorizations
A biological sample taken from an offender who was found guilty of a designated *Criminal Code* offence before June 30, 2000 and who had been:

a. Declared a dangerous offender under Part XXIV of the *Criminal Code*;

b. Declared a dangerous offender or a dangerous sexual offender under Part XXI of the *Criminal Code*;

c. Convicted of murder;

c.1. Convicted of attempted murder or conspiracy to commit murder or to cause another person to be murdered and is currently serving a sentence of imprisonment for that offence;

d. Convicted of a sexual offence within the meaning of subsection 487.055(3) of the *Criminal Code* and is currently serving a sentence of imprisonment for that offence; or

e. Convicted of manslaughter and is currently serving a sentence of imprisonment for that offence.

As of March 31, 2012, approximately 6,244 offenders qualified for inclusion in the retroactive category as defined by Bills C-3 and C-13/C-18. From this list of qualified offenders, 5,750 files were concluded with the remainder being prepared by the Attorneys General for court applications.

Primary and Secondary Offences: See Appendix A.

TABLE 6 – Convicted Offender Samples Received by Province	
British Columbia	31,146
Alberta	28,191
Saskatchewan	11,351
Manitoba	15,265
Ontario	117,131
Quebec	43,050
New Brunswick	3,376
Nova Scotia	6,574
Prince Edward Island	603
Newfoundland & Labrador	3,973
Yukon	451
Northwest Territories	1,600
Nunavut	1,332
TOTAL	**264,043**

Note: The above information represents the convicted offender samples received and is not reflective of the number of convictions eligible for inclusion into the Convicted Offenders Index.

TABLE 7 – Type of Samples Received from Convicted Offenders	
Blood	260,544
Buccal	3,238
Hair	261
TOTAL	**264,043**

TABLE 8 – Breakdown of Convicted Offender Samples Received	
Adult Offender	231,155
Young Offender	32,828
Military Offender	60
TOTAL	**264,043**

TABLE 9 – Convicted Offenders Index Breakdown by Offence	
Assault	162,671
Sexual Offence	47,637
Break and Enter	38,142
Robbery	34,138
Controlled Drugs and Substances Act	18,203
Homicide	7,316
Other	24,818
TOTAL	**332,925**

NOTE: More than one offence may be associated with a sample

SAMPLE REJECTIONS

The NDDB has rejected only 1.4% of the samples it has received to date. Reasons for rejection include: offender convicted of a non-designated offence, inadequate biological samples, use of inappropriate collection kit, missing/invalid order and others. More than 52% of the samples rejected were collected from offenders convicted of non-designated offences and are therefore not eligible for inclusion in the Convicted Offenders Index.

COLLECTION OF ADDITIONAL BODILY SUBSTANCES

In some instances, bodily substances have to be taken a second time, pursuant to a re-sampling authorization issued under subsection 487.091(1) of the *Criminal Code* which provides for an application for re-sampling when the original sample submitted is rejected. If the quality of the biological sample submitted is deemed inadequate for DNA analysis or if it had not been transmitted in accordance with the *DNA Identification Regulations*, the sample can be rejected. Since June 30, 2000, the NDDB has received more than 500 samples that were taken under this provision.

EXPLANATORY NOTES

Assault: includes assault with a weapon or causing bodily harm, aggravated assault, assaulting a peace officer, overcoming resistance to commission of offence, criminal harassment and uttering threats.

Break and Enter: includes break and enter with intent, being unlawfully in a dwelling-house, break and entering a place other than dwelling-house and possession of break-in instruments.

Robbery: includes robbery and extortion.

Sexual Offence: includes rape, sexual intercourse with a female under 14 and between 14 and 16, sexual intercourse with the feeble-minded, sexual interference, invitation to sexual touching, sexual exploitation, incest, bestiality, child pornography, indecent acts, offence in relation to juvenile prostitution, sexual assault with a weapon, aggravated sexual assault, sexual assault, indecent assault, gross indecency, prostitution and luring a child.

Homicide: includes manslaughter.

Controlled Drugs and Substances Act: includes possession for the purpose of trafficking, import or export of controlled substance, trafficking and production of substances.

The **Other** category includes: using explosives, causing death by criminal negligence, causing bodily harm by criminal negligence, causing bodily harm with intent, dangerous operation causing death, failure to stop at the scene of an accident, impaired driving causing death, unlawfully causing bodily harm, kidnapping, hostage taking, mischief causing danger to life, arson (disregard to human life), setting fire to other substance, arson (own property), firearms, fraud, counterfeiting, criminal organization, escape, flight, theft over $5,000, forgery, disguise and intimidation.

TABLE 10 – Breakdown of Biological Samples Destroyed and DNA Profiles Removed from the Convicted Offenders Index

	ADULT	YOUNG PERSON
Conditional discharge	3,525	453
Conviction quashed on appeal	341	15
Absolute discharge	183	34
Duplicate sample (same order)	187	16
No suitable DNA profile obtained	65	9
Order/authorization quashed	27	7
Retention period expired	N/A	1,171
Other	31	8
TOTAL	**4,359**	**1,713**

N/A: Not applicable

TABLE 11 – Endorsements Received by Province	
British Columbia	5,388
Alberta	4,093
Saskatchewan	667
Manitoba	1,898
Ontario	26,044
Quebec	4,360
New Brunswick	42
Nova Scotia	466
Prince Edward Island	5
Newfoundland & Labrador	264
Yukon	72
Northwest Territories	136
Nunavut	89
TOTAL	**43,524**

Note: The above information represents the convicted offender samples received and is not reflective of the number of convictions eligible for inclusion into the Convicted Offenders Index.

TABLE 12 – Breakdown of Endorsements Received	
Adult Offender	41,470
Young Offender	2,053
Military	1
TOTAL	**43,524**

ENDORSEMENT

Section 487.071 of the *Criminal Code* requires police officers to verify with the Canadian Police Information Centre whether a convicted offender's DNA profile is already in the NDDB prior to executing every new DNA data bank order or authorization. If the DNA profile of an offender is contained in the Convicted Offenders Index of the NDDB, police officers may not take the bodily substances from the offender but are required to submit the un-executed DNA data bank order or authorization with an endorsement form confirming they have been advised that the person's DNA profile is already contained in the NDDB, along with the offender's fingerprints to the NDDB. The purpose of the endorsement process is to ensure that an offender's DNA profile remains in the NDDB if:

- The conviction for which a DNA order was made is quashed on appeal; or
- The Order/Authorization is quashed on appeal; or
- The retention period has expired because the person was either:
  - Convicted as a young person; or
  - Discharged under Section 730 C.C. of a designated offence.

TABLE 13 – Endorsement Breakdown by Offence	
Assault	27,847
Break and Enter	8,825
Robbery	5,923
Controlled Drugs and Substances Act	3,935
Sexual Offence	2,255
Homicide	406
Other	8,247
TOTAL	**57,438**

Note: More than one offence may be associated with a sample.

ENDORSEMENT REJECTIONS

The NDDB has rejected only 1.3% of the endorsements it has received to date. Reasons for rejection include: DNA profile from the offender is not contained in the Convicted Offenders Index, offender convicted of a non-designated offence and others. More than 54% of the endorsements rejected were collected from offenders convicted of non-designated offences.

FINANCIAL STATEMENT

April 1, 2011–March 31, 2012

EXPENDITURE TYPE	EXPENDITURE ($ THOUSANDS)
Personnel	1,702
Transport and Telecommunications	5
Development and Infrastructure Support	52
Rentals	2
Repair and Maintenance	100
Utilities, Materials and Supplies	1,217
Capital and Minor Equipment Purchases	363
Miscellaneous	7
SUB-TOTAL	3,448
Indirect Costs[1]	925
TOTAL	**4,373**

[1] Indirect Costs include: Forensic Science and Identification Services administrative and corporate support, facilities management, research and development, recruitment, hiring and training of new personnel, the quality assurance program and the National DNA Data Bank Advisory Committee.

APPENDIX A

DEFINITIONS OF DESIGNATED OFFENCES

PRIMARY COMPULSORY OFFENCES

This category includes offences for which the court is compelled to make an order such as murder, manslaughter, aggravated sexual assault, sexual assault, child pornography and robbery. For a complete list of offences that fall under this category, refer to paragraph (a) under the definition of "primary designated offences" in section 487.04 of the *Criminal Code*.

PRESUMPTIVE PRIMARY OFFENCES

For these offences, the court shall make an order unless the offender convinces the court that the impact of such an order on his/her privacy and security of the person is "grossly disproportionate" to the public interest in the protection of society and the proper administration of justice.

Examples of offences included in this category are: breaking and entering a dwelling-house and hostage taking. For a complete list of offences that fall under this category, refer to paragraphs (a.1) to (d) under the definition of "primary designated offence" in section 487.04 of the *Criminal Code*.

LISTED SECONDARY OFFENCES

For these offences, the court may, on application by the prosecutor, make an order if it is satisfied that it is in the best interests of the administration of justice to do so. Examples of offences included in this category are: breaking and entering a place other than a dwelling-house, assault and indecent acts. For a complete list of offences that fall under this category, refer to paragraphs (c) and (d) and subparagraph (e)(ii) under the definition of "secondary designated offence" in section 487.04 of the *Criminal Code*.

GENERIC SECONDARY OFFENCES

For these offences, the court may, on application by the prosecutor, make an order if it is satisfied that it is in the best interests of the administration of justice to do so. All the other non-listed *Criminal Code* offences, including certain *Controlled Drugs and Substances Act* offences that are prosecuted by indictment for which the maximum punishment is imprisonment for five years or more, fall under this category of offences.

Examples of offences included in this category are: possession of explosive without lawful excuse, pointing a firearm, dangerous driving, dangerous driving causing bodily harm, causing death by criminal negligence, theft over $5,000, and drug related offences (e.g. trafficking and possession for the purpose of trafficking, importing and exporting and production of substances) which fall under sections 5, 6 and 7 of the *Controlled Drugs and Substances Act*. For more information, refer to paragraphs (a) and (b) and subparagraph (e)(i) under the definition of "secondary designated offence" in section 487.04 of the *Criminal Code*.

APPENDIX B

CHRONOLOGY OF DNA LEGISLATION IN CANADA

1995	**July**	Bill C-104 receives Royal Assent. The bill amends the *Criminal Code* and the *Young Offenders Act* to enable judges to issue a warrant allowing police to obtain DNA evidence from suspects in criminal investigations. This is Phase I of the Government of Canada's DNA Strategy which provided the legislative framework for the use of DNA evidence in criminal proceedings.
1996	**January**	Phase II of the Government of Canada's DNA Strategy begins with nation-wide consultations for the establishment of a national DNA data bank.
1998	**December**	Bill C-3 (Statutes of Canada 1998, c. 37) receives Royal Assent. Work begins with an 18-month schedule to establish the NDDB.
1999	**November**	Bill S-10 is tabled in the Senate. Based on Senate recommendations, the Bill contains amendments to Bill C-3 including: the taking of fingerprints for identification purposes, the inclusion of offenders convicted of designated offences in the military justice system, and a full legislative review of the DNA legislation and NDDB to be conducted by the Senate and House of Commons after five years.
2000	**May**	Partial proclamation of Bill C-3 which established the DNA Data Bank Advisory Committee by Regulations.
2000	**June**	Full proclamation of Bills C-3 and S-10. DNA sample collections are to commence immediately following proclamation.
2005	**May**	Royal Assent of Bill C-13 (Statutes of Canada, 2005, c. 25). Amendments to expand the retroactive scheme, to clarify the NDDB DNA profile sharing procedures with forensic laboratories, and to establish procedures to confirm the validity of NDDB orders come into force on Royal Assent. Other provisions of the Bill will come into force on proclamation.

2007	**June**	Royal Assent of Bill C-18 (Statutes of Canada 2007, c. 22). Amendments to facilitate the implementation of Bill C-13, and: • further expand the retroactive scheme to include attempted murder and conspiracy, and replace the "is serving a sentence of two years or more" requirement with "is on the date of the application serving a sentence of imprisonment" for that offence; • allow for NDDB orders to be made within 90 days after the person is sentenced or found not criminally responsible on account of mental disorder; • allow a person to be summoned for the execution of a NDDB order and penalties for failure to appear; • clarify international NDDB DNA profile sharing procedures; and, • clarify destruction procedures for defective orders.
2008	**January**	Full proclamation of Bills C-13 and C-18.
2009	**June**	Parliamentary Statutory Review of the DNA legislation and NDDB by the House of Commons Standing Committee on Public Safety and National Security (SECU Report, June 2009) and government acceptance in principle of the SECU Report's recommendations in October 2009.
2010	**June**	Parliamentary Statutory Review of the DNA legislation and NDDB by the Senate Standing Committee on Legal and Constitutional Affairs (Report–June 2010). The Government response in December 2010 noted that recommendations requiring legislative change are "in broad agreement" with those made by SECU and that operational recommendations would require broader discussion.
2010	**October**	Full proclamation of Bill C-14 (Statutes of Canada 2009, c. 22). The Bill amended the *Criminal Code* by adding three offences to the list of primary compulsory offences.
2011	**April**	Proclamation of Bill S-2 (Statutes of Canada 2010, c. 17). The Bill amended the *Criminal Code* to make DNA sampling mandatory for convicted sex offenders. Convicted sex offenders must also be registered in the National Sex Offender Registry.